IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5775 OF 2003

Shri Mahesh Ramchandra Patil & ors.... Petitioner

Versus

Shri Dhanraj Jyotiba Ghadge & ors.... Respondent

..

Mr.Dilip Bodke for Petitioner

CORAM : A.S.Oka, J

DATE: 10th December, 2004

P.C.:

1. By an order dated 8th September, 2003 this court directed that notice be issued to the respondents for final disposal and private notice was ordered to be served in the various modes mentioned in the said order. Office noting shows that the respondent nos. 1 to 4 have been served. None appears for the respondents. I have heard Mr.Bodke appearing for the petitioners.

2. Petitioners are original defendant nos. 1 and 2. Respondent no.1 is the original plaintiff. Challenge in this petition under Article 227 of the Constitution of India is to the order dated 30th March, 2002 by which an application for amendment of the written statement has been rejected. The learned trial Judge has rejected the application on the ground that there was a delay in filing the said application. It is to be noted that the application is not rejected on the ground that trial has started.

3. I have perused the text of the amendment. Part of the amendment is based on a sale deed executed by the respondent no.1 on 1st December, 1995 in favour of a third party. By the amendment, the petitioners are seeking to correct a mistake which has inadvertently crept in the original written statement while mentioning a date. By the said amendment the petitioners want to clarify that the contention raised in para 14 of the written statement are

in the alterrnative and without prejudice to the earlier contentions raised in the written statement.

4. It is well settled position of law that the court has to be very liberal in granting amendment to the pleadings especially in a pre-trial stage. The trial court was dealing with an application for amendment of the written statement. Therefore, some delay in making an application could not have been a ground to reject the application. In my view, the amendment as prayed for deserves to be allowed.

5. Hence, I pass the following order :

(i) The impugned judgment dated 30th March, 2002 is quashed and set aside.

(ii) Application at Exhibit 95 made by the petitioners is allowed. The trial court will permit the petitioners to carry out the amendment within a period of two weeks from the date of production of an authenticated copy of this order.

(iii) Rule is made absolute in the above terms with no order as to costs.

(iv) Parties and the concerned court to act on an authenticated copy of this order.

A.S.OKA, J